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09/647,028	05/29/2002	Kevin T Whitley	36968 176363	3814

24504 7590 09/29/2003

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EXAMINER

EDWARDS JR, TIMOTHY

ART UNIT	PAPER NUMBER
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2635

DATE MAILED: 09/29/2003

18

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/647,028

Applicant(s)

WHITLEY ET AL.

Examiner

Timothy Edwards

Art Unit

2635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 20-48 is/are pending in the application.
- 4a) Of the above claim(s) 20,22,26,28-30,39,40 and 42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21,23-25,27,31-38,41 and 43-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

The incorporation of essential material in the specification by reference to a foreign application or patent, or to a publication is improper. Applicant is required to amend the disclosure to include the material incorporated by reference. The amendment must be accompanied by an affidavit or declaration executed by the applicant, or a practitioner representing the applicant, stating that the amendatory material consists of the same material incorporated by reference in the referencing application. See *In re Hawkins*, 486 F.2d 569, 179 USPQ 157 (CCPA 1973); *In re Hawkins*, 486 F.2d 579, 179 USPQ 163 (CCPA 1973); and *In re Hawkins*, 486 F.2d 577, 179 USPQ 167 (CCPA 1973).

The attempt to incorporate subject matter into this application by reference to (1) GRPS MS-SGSN LLC, GSM 04.64 (ETSI No. TS 101 351); (2) GRPS MS-SGSN Sndcp, GSM 04.65 (ETSI No. TS 101 297); (3) IW PLMN GRPS-PDN, GSM 09.60 (ETSI No. EN 301 347); (4) GRPS-PDN, GSM 09.61 (ETSI No. TS 101 348) and (5) Digital Cellular Telecommunications System (Phase 2+): GPRS Project scheduling and open issue, GSM 10.60 is improper because essential material necessary to describe the claimed invention is not disclosed in the specification.

### ***Response to Arguments***

Applicant's arguments with respect to claims 21, 33, and 38 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21,23,24,31,33,48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tracy et al [US 6,150,955].

Considering (amended) claim 21, Tracy disclose an apparatus and method for transmitting data via a digital control channel of a digital wireless network using GSM technology, this data is associated with utility meters, comprising a) periodic formulating short message reporting data (see col 2, lines 39-47); b) transmitting the message over GSM network via a Short Messaging Center coupled to a Mobile Switching Center (see col 12, lines 45-56); c) receiving the message at a terminal (see col 12, line 56 to col 13, line 5); d) a gateway comprising a processor and a transceiver (see col 2, lines 27-43), except a SIM card for transmitting short messages is not specifically recited by Tracy. The SIM card is used in the transmission and receiving of SMS messages. Therefore, it would have been obvious to one of ordinary skill in the art the SIM card is within the scope of the Tracy system because Tracy teaches the sending of short messages from a data collection device; (1) except controlling devices located at a facility by a gateway, wherein the gateway controls one or more devices coupled to the gateway is not specifically recited by Tracy. However, in col 3, lines 9-28 Tracy discloses bi-directional

communication between the data collection unit and a meter. Tracy discloses in col 13, lines 47-50 transmitting commands to the data collection device for controlling power being supplied to a location. Therefore, it would have been obvious to one of ordinary skill in the art the controlling of devices located at a facility by a data collection device is within the scope of the Tracy system because Tracy discloses the controlling power being supplied to a location.

Considering claim 23, Tracy discloses the limitation of this claim in col 3, lines 36-45, and col 5, line 62 to col 6, line 14.

Considering claim 24, Tracy discloses the limitation of this claim in col 2, lines 51-57 and col 6, lines 14-22.

Considering claim 33, Tracy disclose a) multiple gateways (see col 4, line 64 to col 5, line 14); b) a base station controller (see col 5, lines 44-54); c) a terminal for receiving the formatted message (see col 6, lines 40-43 and fig 1, item 140); except controlling devices located at a facility by a gateway, wherein the gateway controls one or more devices coupled to the gateway is not specifically recited by Tracy. However, in col 3, lines 9-28 Tracy discloses bi-directional communication between the data collection unit and a meter. Tracy discloses in col 13, lines 47-50 transmitting commands to the data collection device for controlling power being supplied to a location. Therefore, it would have been obvious to one of ordinary skill in the art the controlling of devices located at

a facility by a data collection device is within the scope of the Tracy system because Tracy discloses the controlling power being supplied to a location.

Considering claim 34, Tracy discloses the limitation of this claim in col 13, lines 3-6 and 34-40.

Considering claim 35, the limitation of this claim is interpreted and rejected as stated in claim 34.

Considering claim 36, Tracy discloses the limitation of this claim in col 3, lines 9-28.

Considering claim 38, Tracy discloses the limitation of this claim in col 12, line 45 to col 13, line 11; except formulating a message for transmission according to a GPRS format. Applicant states in specification page 5, lines 1-2, GPRS can be implemented over a wireless network, such as a GSM network. GPRS protocol is known in the art as evident by applicant's incorporation by reference. GPRS protocol and SMS protocol can be sent over the Internet. Therefore, it would have been obvious to one of ordinary skill in the art to use a known protocol that can be implemented on a GSM network and be sent over the Internet in the Tracy system because Tracy is concern with the sending of GSM data over the Internet.

Art Unit: 2635

Considering claim 41, Tracy discloses the limitations of these claims in col 12, lines 48-56.

Considering claim 48, Tracy does not specifically recite a user formulating a message from a mobile station. Applicant admits on page 8, lines 1-10, of his specification, the use of a Nokia 9000 GSM communicator is well known in the art. As such, one of ordinary skill in the art would readily recognize a device having GSM communication could be used in the Tracy system because Tracy expresses the desire to communicate and receive data using GSM protocol. Tracy disclose in col 13, line 64 to col 14, line 11 the modification of his system is within his system. Therefore, it would have been obvious to one of ordinary skill in the art to use a mobile device capable of transmitting GSM protocol in the Tracy system because Tracy expressed the desire to transmit/receive data using the GSM protocol.

Claims 27,31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tracy as applied to claim 21 above, and further in view of Ehlers et al [US 5,572,438].

Considering claim 27,31, Tracy does not specifically recite monitoring of energy usage of a device within a facility by polling at least one device therein. Tracy discloses in col 13, lines 47-50 transmitting commands to the data collection device for controlling power being supplied to a location. Ehlers discloses in col 29, lines 39-56 the monitoring of appliances with a facility by polling at least one device therein. Therefore, it would

have been obvious to one of ordinary skill in the art to modify the Tracy system to include monitoring of energy usage of a device within a facility by polling at least one device therein as taught by Ehlers because both references are concern with the collection and transmission of utility data.

Claims 25,32,43-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tracy et al as applied to claim 21 above, and further in view of Jenney et al [US 5,897,607] and Serbetciouglu et al [US 5,719,918].

Considering claim 25, Tracy does not specifically recite coupling the central processor to an Internet protocol network to allow users to view information concerning activities at a selected facility. Tracy discloses the transmission of utility data to an interested party and the use of any other wireless system to transmit information to a remote receiving location (see col 2, lines 39-57) via SMSC short message station. Serbetciouglu teaches the transmission of utility data via a SMSC short messages station, which can be connected, to TCP/IP protocol (see col 5, line 56 to col 6, line 6). Jenney teaches coupling the central processor unit of a utility database to the Internet to allow the display of utility data to the customer (see col 7, line 51-65). Therefore, it would have been obvious to one of ordinary skill in the art to couple the central processor of the Tracy system to an internet protocol network to allow users to view information concerning activities at a selected facility as taught by Jenney because all references are concern with the transmission of utility data.



Considering claim 32, the limitation of this claim is interpreted and rejected as stated in claim 25.

Considering claims 43-47, the limitation of this claim is interpreted and rejected as stated in claim 25

Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tracy et al as applied to claim 33 above, and further in view of Jenney et al.

Considering claim 37, Tracy does not specifically recite a user may formulate and send a message directly to a gateway. Jenney teaches the direct interaction of a user with gateway (i.e. a data collection device, see col 7, lines 4-7).

1. Any inquiry concerning this communication should be directed to Examiner Timothy Edwards at telephone number (703) 305-4896. The examiner can normally be reached on Monday-Thursday, 8:30 a.m.-4:00 p.m. The examiner cannot be reached on Fridays.

If attempt to reach the examinee by telephone are unsuccessful, the examiner's supervisor, Michael Horabik, can be reached on (703) 305-4704.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-4700, Mon-Fri., 8:30 a.m.-5:00 p.m.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or fax to:

(703), 872-9314 (for formal communications intended for entry)

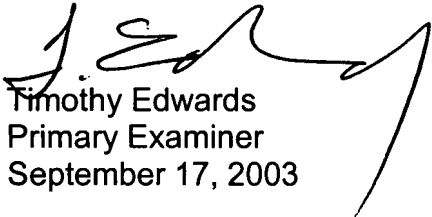
Or:

(for informal or draft communications, please label "PROPOSED"

or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121

Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).



Timothy Edwards  
Primary Examiner  
September 17, 2003